IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION NO 804 OF 2000

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

---

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

CENTRAL BUREAU OF INVESTIGATION

VERSUS

THE STATE OF GUJARAT

Appearance:

MR AJ SHSH for the Petitioner

MR SAMIR J DAVE APP for Respondent No.1

MR BM GUPTA for the Respondent No.2

CORAM : MR JUSTICE S.K.KESHOTE

Date of Order : 17/02/2001

C A V JUDGMENT

#. Learned counsel for the parties advanced their

arguments in the matter on the merits but in view of the order which I propose to pass in this petition it is not necessary to refer all those contentions and to decide the same on merits.

#. The facts of the case are that a private complaint was filed by the respondent No.2-original complainant in the court of learned Special Judge, ACB., at Ahmedabad against the high rank police officers viz. Commissioner of Police, Inspector General of Police and others for the offences under Prevention of Corruption Act and Indian Penal Code committing fraud with exchequer or public money for their own benefits.

#. This complaint was filed by respondent No.2 on 31.7.2000 in the court of Special Judge, ACB, Ahmedabad. The Special Judge, ACB, Ahmedabad on 31.7.2000 passed the order which is impugned in this Special Criminal Application. The petitioner has given the translation of the impugned order which reads as under :-

> "C.B.I. Gandhinagar is entrusted with investigation of this complaint U/s.156(3) of Criminal Procedure Code. It be informed to send report next date fixed for submitting report is 30.8.2000".

The petitioner is questioning the jurisdiction of the Special Judge, ACB, Ahmedabad to sent the private complaint for investigation under Section 156(3) of the Criminal Procedure Code, 1973 to the C.B.I.. The learned counsel for the respondent No.2 contended that this order has been passed by learned Special Judge, ACB., Ahmedabad at pre-cognizance stage and no opportunity of hearing is to be afforded in the matter either to the accused or the C.B.I. In his submission C.B.I. has to carry out the order given by the Special Judge, ACB., Ahmedabad. It is contended that the petitioner has no locus standi to challenge that order. Shri Shah on the other hand contended that no such direction can be given by the Special Judge, ACB., Ahmedabad and as this order has been passed behind the back of the petitioner it was not in a position to place its view for consideration before the court concerned. Shri Shah submitted that the principles of natural justice have been violated.

#. Though I am not expressing any final opinion but prima facie I find that at the stage where the Judicial Magistrate or the Special Judge ordered for investigation of a private complaint by C.B.I. under Section 156(3) of

Criminal Procedure Code, 1973 the Bureau needs not to be given an opportunity of hearing. However, in this case, this is not only the grievance but the substance of the grievance is that the Special Judge, ACB., Ahmedabad has no jurisdiction to entrust this investigation by resorting its powers under Section 156(3) of Criminal Procedure Code, 1973 to C.B.I. This matter relates to the very jurisdiction of the Special Judge, ACB., Ahmedabad and leaving apart the question whether opportunity of hearing is to be given to the petitioner or not before passing that order, it is always open to the petitioner to bring this issue to the notice of the court concerned and if such an application is filed by the Bureau it has to be decided by Special Judge, ACB., in accordance with law. In fact, C.B.I. instead of filing this petition should have first approached to the Special Judge, ACB., Ahmedabad with its all these grievances and in case the court declines to decide the matter or sits over the matter for long period then there would have been some semblance of justification in the approach of the petitioner to come to this court. This approach of C.B.I. directly to come to this court in the matter where first it has to draw the attention of the court concerned on this jurisdiction issue is difficult to appreciate. I fail to see what for the C.B.I. has undertaken of this remedy instead of first approach to the court concerned by filing simple application and drawing its attention towards this jurisdiction issue. C.B.I. would have thought of filing of this petition without first going to the court concerned but this court will not certainly permit and encourage this approach and attitude of the petitioner.

In the result, this petition fails and the same dismissed. Rule is discharged. Interim relief, if any granted earlier stands vacated. However, dismissal of this petition will not come in the way of the petitioner to approach to the Special Judge, ACB., Ahmedabad with its grievance made in this petition. In case, C.B.I. approaches to the Special Judge, ACB., Ahmedabad with its grievance regarding court's jurisdiction to give direction for the investigation of the matter to C.B.I. the court should decide this issue within a period of 2 months from the date of the receipt thereof after hearing the concerned parties. In the facts of this case no order as to costs.

(S.K.Keshote, J.)

*Pvv

#.